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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0085]

RIN 0579-AE04

Importation of Fresh Andean Blackberry and Raspberry Fruit From Ecuador Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh Andean blackberry and raspberry fruit from Ecuador into the continental United States. As a condition of entry, the fruit would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments, from a pest free production site within a certified low pest prevalence area for fruit flies, and pest monitoring and trapping. The fruit would also have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador bearing an additional declaration stating that the consignment was produced and prepared for export in accordance with the requirements of the systems approach. This action would allow for the importation of

fresh Andean blackberry and raspberry fruit from Ecuador while continuing to provide protection against the introduction of quarantine pests into the continental United States.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0085>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0085, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0085> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Regulations, Permits and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352; Claudia.Ferguson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States. The regulations currently do not authorize the importation of fresh Andean blackberry and raspberry fruit from Ecuador. The national plant protection organization (NPPO) of Ecuador has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow Andean blackberry and raspberry fruit to be imported from Ecuador into the continental United States.

As part of our evaluation of Ecuador's request, we have prepared a pest risk assessment (PRA), titled “Importation of Fresh Fruit of Andean Blackberry (Rubus glaucus Benth) and Raspberry (Rubus idaeus Linnaeus) into the Continental United States from Ecuador” (June 2012). The PRA evaluates the risks associated with the importation of fresh Andean blackberry and raspberry fruit into the continental United States from Ecuador. Copies of the PRA may be obtained by contacting the individual listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA identified three quarantine pests likely to follow the pathway of fresh Andean blackberry and raspberry fruit imported from Ecuador: Anastrepha fraterculus (South American fruit fly), Ceratitis capitata (Mediterranean fruit fly), and Copitarsia decolora, a moth. All of these pests were rated in the PRA as posing a high pest risk potential.

APHIS has determined that measures beyond standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow

the importation of fresh Andean blackberry and raspberry fruit from Ecuador into the continental United States produced under a systems approach.

APHIS has also prepared a risk management document for the importation of fresh Andean blackberry and raspberry fruit from Ecuador that identifies a systems approach of specific mitigation measures against the quarantine pests identified in the PRA and concludes that those measures, along with the general requirements for the importation of fruits and vegetables in the regulations, will be sufficient to prevent the introduction of the identified pests into the continental United States. Therefore, we are proposing to add the systems approach requirement to the regulations in a new § 319.56-73. The proposed measures are described below.

General Requirements

Paragraph (a) of proposed § 319.56-73 would set out general requirements for the NPPO of Ecuador and for growers and packers producing fresh Andean blackberry and raspberry fruit for export to the continental United States.

Paragraph (a)(1) of proposed § 319.56-73 would require the NPPO of Ecuador to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56-73. An operational workplan is an agreement developed between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs.

Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Paragraph (a)(2) of proposed § 319.56-73 would state that APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.

Paragraph (a)(3) of proposed § 319.56-73 would state that only commercial consignments of fresh Andean blackberry and raspberry fruit from Ecuador would be allowed to be imported into the continental United States. Commercial consignments are less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, may be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

Production Site Requirements

Paragraph (b) of proposed § 319.56-73 would require certain mitigation measures to be taken under the systems approach at the registered production sites. Paragraph (b)(1) would require the production site to carry out any phytosanitary measures specified in the operational workplan. Examples of measures may include field monitoring, bait spraying, and trapping.

Both Andean blackberries and raspberries have been established in the scientific literature as poor hosts of Anastrepha fraterculus and Ceratitis capitata. Currently, APHIS does not require mitigations for Ceratitis capitata for raspberries imported from countries with this pest, including Colombia, Costa Rica, El Salvador, France, Guatemala, Honduras, Nicaragua, and Panama. Therefore, mitigations for Ceratitis capitata other than requiring commercial

production and inspections are not included in the systems approach. However, there are a few recorded instances of Anastrepha fraterculus infesting Andean blackberries in the field. Because of the slightly stronger host status potential for Anastrepha fraterculus in blackberries and raspberries, we would include in the operational workplan a requirement for field trapping and bait spraying in order to maintain low pest prevalence for this pest.

Paragraph (b)(2) of proposed § 319.56-73 would require that all production sites participating in the Andean blackberry and raspberry fruit export program be registered with the NPPO of Ecuador. Such registration would facilitate traceback of a consignment of blackberry and raspberry fruit to the production site in the event that quarantine pests were discovered in the consignment at the port of first arrival into the United States. APHIS would reserve the right to conduct oversight visits at the production site in the event of pest interceptions or other problems.

Paragraph (b)(3) would require the NPPO of Ecuador or their designee¹ to conduct a fruit fly trapping program for the detection of Anastrepha fraterculus at each production site. This program would support efforts for pest free production sites within a certified low pest prevalence area for fruit flies. Details of the trapping program and designation, if applicable, would be specified in the operational workplan.

Paragraph (b)(4) would require that the NPPO of Ecuador maintain records of trap placement, trap checks, and any captures of Anastrepha fraterculus. The trapping records would have to be maintained and available for APHIS' review for at least 1 year.

¹ An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

Lastly, paragraph (b)(5) would require that the NPPO of Ecuador also maintain an APHIS-approved quality control program to monitor or audit the trapping program, the details of which would be specified in the operational workplan.

Packinghouse Requirements

Paragraph (c) of proposed § 319.56-73 would set forth requirements for mitigation and inspection measures specified under the operational workplan that would have to take place at registered packinghouses.

Paragraph (c)(1) would require that packinghouses be registered with the NPPO of Ecuador and comply with the requirements for inspecting and safeguarding fruit as specified in the operational workplan. If issues should arise, registration would allow for the traceback of a box of fruit to its place of production and packinghouse and would allow APHIS and the NPPO of Ecuador to determine what remedial actions are necessary.

Paragraph (c)(2) would require that while in use for exporting Andean blackberries and raspberries to the continental United States, the packinghouses may only accept fruit from registered production sites.

Paragraph (c)(3) would state that if a single Anastrepha fraterculus, Ceratitis capitata, or Copitarsia decolora is detected by the NPPO of Ecuador in a consignment, that consignment may not be exported to the continental United States. Furthermore, if a single Anastrepha fraterculus or Ceratitis capitata were detected in a consignment at the port of entry, the consignment would be traced back to the production site and would result in immediate cancellation of exports to the continental United States from that production site. The registered production site would lose its ability to export Andean blackberries and raspberries to the continental United States until APHIS and the NPPO of Ecuador mutually determine that risk mitigation is achieved.

Phytosanitary Certificate

The NPPO of Ecuador would be responsible for export certification, inspection, and issuance of phytosanitary certificates. Paragraph (d) of proposed § 319.56-73 would require each consignment of Andean blackberries and/or raspberries to be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador bearing an additional declaration stating that the consignment was produced and prepared for export in accordance with the requirements of § 319.56-73.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The proposed rule is in response to a market access request from the Government of Ecuador for APHIS authorization to allow the importation of fresh Andean raspberries (Rubus idaeus) and blackberries (Rubus occidentalis) into the continental United States under a systems approach. The systems approach would integrate prescribed mitigation measures that cumulatively achieve the appropriate level of phytosanitary protection. Generally, APHIS allows the importation of fresh fruits and vegetables when requested by a foreign government, and when sound science and an analysis of the risks show that it is appropriate to do so.

U.S. entities that may be impacted by the proposed rule are U.S. producers of fresh raspberries, blackberries, and loganberries, the majority of which are produced in Oregon (98 percent of U.S. blackberries and almost all loganberries), Washington (95 percent of U.S. red raspberries) and California (84 percent of all color raspberries). As a species, Andean raspberries and blackberries are similar to loganberries.

Impacts of the proposed rule on U.S. entities would be dependent upon the quantity of fresh Andean raspberries and blackberries from Ecuador. In 2005, Ecuador had approximately 10,564 acres of Andean blackberry and raspberry crops with a potential production output of 6,840 metric tons (about 15 million pounds) of fruit. Between 2000 and 2006, Ecuador exported an average of 13 metric tons (about 28,660 pounds) of Andean blackberries and raspberries. In 2007, exports of fresh Andean raspberries and Andean blackberries from Ecuador reached 90 metric tons (about 198,416 pounds). According to an Ecuadorian government estimate, the maximum quantity of fresh Andean raspberries and blackberries that could be exported to the United States is less than 182 metric tons per year or 401.24 thousand pounds.

On average, between 2008 and 2012 the United States imported 37.22 million pounds of fresh raspberries, and between 2011 and 2013 imported 63 million pounds of fresh blackberries. Compared to the total average U.S. imports of fresh raspberries and blackberries, the Ecuadorian import share would be less than 0.5 percent of the total U.S. imports for these fruits.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh Andean blackberry and raspberry fruit to be imported into the continental United States from Ecuador. If this proposed rule is adopted, State and local laws and regulations regarding fresh Andean blackberry and raspberry fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2014-0085. Please send a copy of your comments to: (1) APHIS, using one of the methods described under ADDRESSES at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Allowing the importation of fresh Andean blackberry and raspberry fruit into the continental United States from Ecuador will require an operational workplan, production site registration, packinghouse registration, a quality control program, recordkeeping, and phytosanitary certificates issued by the NPPO of Ecuador stating that the consignments were

produced and prepared for export in accordance with the requirements of § 319.56-73. The fruit would also be required to be imported in commercial consignments.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2.833 hours per response.

Respondents: NPPO, producers, exporters.

Estimated number of respondents: 23.

Estimated number of responses per respondent: 2.608.

Estimated annual number of responses: 60.

Estimated total annual burden on respondents: 170 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-73 is added to read as follows:

§ 319.56-73. Andean blackberries and raspberries from Ecuador.

Andean blackberries (Rubus glaucus Benth) and raspberries (Rubus idaeus Linnaeus) may be imported into the continental United States from Ecuador under the conditions described in this section and other applicable provisions of this subpart. These conditions are designed to

prevent the introduction of the following quarantine pests: Anastrepha fraterculus, Ceratitis capitata, and Copitarsia decolora.

(a) General requirements. (1) The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details the systems approach to pest mitigations and other specific requirements that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(2) APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.

(3) Andean blackberry and raspberry fruit from Ecuador may be imported into the continental United States in commercial consignments only.

(b) Production site requirements. (1) Each production site must carry out the phytosanitary measures specified in the APHIS-approved operational workplan.

(2) All places of production that participate in the export program must be approved by and registered with the NPPO of Ecuador. APHIS reserves the right to conduct oversight visits in the event of pest interceptions or other problems.

(3) The NPPO of Ecuador or their designee must conduct a fruit fly trapping program for the detection of Anastrepha fraterculus at each production site in accordance with the operational workplan. If a designee conducts the program, the designation must be detailed in the operational workplan. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

(4) The NPPO of Ecuador must maintain records of trap placement, trap checks, and any captures of Anastrepha fraterculus. The trapping records must be maintained for APHIS' review for at least 1 year.

(5) The NPPO of Ecuador must maintain a quality control program, approved by APHIS, to monitor or audit the trapping program in accordance with the operational workplan.

(c) Packinghouse requirements. (1) Packinghouses must be registered with the NPPO of Ecuador and comply with the requirements as specified in the operational workplan.

(2) While in use for exporting Andean blackberries and raspberries to the continental United States, the packinghouses may only accept fruit from registered production sites.

(3) If a single Anastrepha fraterculus, Ceratitis capitata, or Copitarsia decolora is detected by the NPPO in a consignment, the consignment may not be exported to the United States. Furthermore, if a single Anastrepha fraterculus or Ceratitis capitata is detected in a consignment at the port of entry and traced back to a registered production site, that production site will lose its ability to export Andean blackberries and raspberries to the continental United States until APHIS and the NPPO of Ecuador mutually determine that risk mitigation is achieved.

(d) Phytosanitary certificate. Each consignment of Andean blackberries and/or raspberries must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador and bear an additional declaration stating that the consignment was produced and prepared for export in accordance with the requirements of § 319.56-73.

Done in Washington, DC, this 20th day of April 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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